



Misconceptions about Wills, Trusts, and Gifts

Some beliefs are not always true

Many widely held beliefs may not be all that trustworthy. Here are two that come to mind: (1) living trusts are always better than wills, and (2) gifting your home to your children is a good means of estate transfer.

Living trusts are a valuable tool . . .

The first suspect belief is that living trusts are always better than wills. Living trusts enable a married couple to divide their total estate into two parts. Doing so can help to avoid estate taxes on a total combined estate of up to \$3 million as of 2004 and up to \$7 million in 2009, while avoiding the costs and delays of probate.

Such trusts also set forth provisions by which the surviving spouse can access, use, and dispose of trust property. Such provisions can be quite restrictive. These provisions might be all right for older couples who are ready to transfer their wealth to their children and whose needs match the resource amounts available under the trust. They may also be all right for spouses who wish to protect the interests of children from previous marriages, as with a QTIP trust.

. . . But living trusts are not always best

Generally, trust provisions serve to preserve the estate for the beneficiaries while providing sufficient but limited access and support to the surviving spouse. But these same provisions can be unduly burdensome for a younger surviving spouse who has many years ahead and who needs greater access and control of the deceased's estate than the trust allows.

No one expects a spouse to die at age forty or even fifty. But when it happens, it can leave a surviving spouse in need of maximum flexibility and control when it comes to managing family assets, housing, and investment income over the long haul. A good estate plan, whether a trust or will, foresees and addresses such contingencies, and sometimes a will is the more sensible choice.



Gifting a home has attractions . . .

A second belief is that deeding your home to your children is a good idea. Whether you give your home to your children as an outright gift or bequeath it to them upon your death, the value of the home will be part of your estate. However, as a gift you can exclude \$11,000 in value per child per giver in the year the gift is made, and you may

be able to exclude even more under other arrangements. Moreover, the value of your home given as a gift earlier in your life will probably add less to your taxable estate than its value transferred upon your death.

. . . But gifting a home also has dangers

Two problems may arise from gifting your home to your beneficiaries. The first is that your gift of a home transfers with it your capital gains basis, while the bequest of a home upon your death steps up this basis to the home's value at that time. When sold, the stepped-up basis could save your children in capital gains taxes, while the gifted basis could cost them in gains taxes.

The second problem that may arise is that your children can and may take full possession of the home and put you out or make your life miserable while you live there. I wish I could say this was unlikely, but it happens more often than anyone might think—and in the “best” of families.

Get help before acting

Before you make or plan any transfer of your estate property through gifts, a living trust, or a will, seek the assistance of a competent attorney, certified public accountant, and/or financial counselor. These professionals can help you to foresee potential problems and address them through the most workable strategies and appropriate means. They can also help to give you greater assurance that unintended consequences will be avoided.

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